

### **Rule 1.15 Safekeeping Property**

(a) Definitions:

(1) “Trust property” means property of clients or third persons that is in a lawyer's possession in connection with a representation and includes property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, executor, or otherwise. Trust property does not include documents or other property received by a lawyer as investigatory material or potential evidence. Trust property in the form of funds is referred to as “trust funds.”

(2) “Trust account” means an account in a financial institution in which trust funds are deposited. Trust accounts must conform to the requirements of this rule.

(b) Segregation of Trust Property. A lawyer shall hold trust property separate from the lawyer's own property.

(1) Trust funds shall be held in a trust account, except that advances for costs and expenses may be held in a business account.

(2) No funds belonging to the lawyer shall be deposited or retained in a trust account except that:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein, and

(ii) Trust funds belonging in part to a client or third person and in part currently or potentially to the lawyer shall be deposited in a trust account, but the portion belonging to the lawyer must be withdrawn at the earliest reasonable time after the lawyer's interest in that portion becomes fixed. A lawyer who knows that the right of the lawyer or law firm to receive such portion is disputed shall not withdraw the funds until the dispute is resolved. If the right of the lawyer or law firm to receive such portion is disputed within a reasonable time after notice is given that the funds have been withdrawn, the disputed portion must be restored to a trust account until the dispute is resolved.

(3) Trust property other than funds shall be identified as such and appropriately safeguarded.

(c) Prompt Notice and Delivery of Trust Property to Client or Third Person.

Upon receiving trust funds or other trust property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or as otherwise permitted by law or by agreement with the client or third person on whose behalf a lawyer holds trust property, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third persons entitled to receive.

(d) Accounting.

(1) Upon final distribution of any trust property or upon request by the client or third person on whose behalf a lawyer holds trust property, the lawyer shall promptly render a full written accounting regarding such property.

(2) On or before the date on which a withdrawal from a trust account is made for the purpose of paying fees due to a lawyer, the lawyer shall deliver to the client in writing (i) an itemized bill or other accounting showing the services rendered, (ii) written notice of amount and date of the withdrawal, and (iii) a statement of the balance of the client's funds in the trust account after the withdrawal.

(e) Operational Requirements for Trust Accounts.

(1) All trust accounts shall be maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person on whose behalf the trust property is held, except that all funds required by this rule to be deposited in an IOLTA account shall be maintained in this Commonwealth.

(2) Each trust account title shall include the words "trust account," "escrow account," "client funds account," "conveyancing account," "IOLTA account," or words of similar import indicating the fiduciary nature of the

account. Lawyers maintaining trust accounts shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts.

(3) No withdrawal from a trust account shall be made by a check which is not prenumbered. No withdrawal shall be made in cash or by automatic teller machine or any similar method. No withdrawal shall be made by a check payable to “cash” or “bearer” or by any other method which does not identify the recipient of the funds.

(4) Every withdrawal from a trust account for the purpose of paying fees to a lawyer or reimbursing a lawyer for costs and expenses shall be payable to the lawyer or the lawyer’s law firm.

(5) Each lawyer who has a law office in this Commonwealth and who holds trust funds shall deposit such funds, as appropriate, in one of two types of interest-bearing accounts: either (i) a pooled account (“IOLTA account”) for all trust funds which in the judgment of the lawyer are nominal in amount, or are to be held for a short period of time, or (ii) for all other trust funds, an individual account with the interest payable as directed by the client or third person on whose behalf the trust property is held. The foregoing deposit requirements apply to funds received by lawyers in connection with real estate transactions and loan closings, provided, however, that a trust account in a lending bank in the name of a lawyer representing the lending bank and used exclusively for depositing and disbursing funds in connection with that particular bank’s loan transactions, shall not be required but is permitted to be established as an IOLTA account. All IOLTA accounts shall

be established in compliance with the provisions of paragraph (g) of this rule.

(6) Property held for no compensation as a custodian for a minor family member is not subject to the Operational Requirements for Trust Accounts set out in this paragraph (e) or to the Required Accounts and Records in paragraph (f) of this rule. As used in this subsection, "family member" refers to those individuals specified in section (e)(2) of rule 7.3.

(f) Required Accounts and Records: Every lawyer who is engaged in the practice of law in this Commonwealth and who holds trust property in connection with a representation shall maintain complete records of the receipt, maintenance, and disposition of that trust property, including all records required by this subsection. Records shall be preserved for a period of six years after termination of the representation and after distribution of the property. Records may be maintained by computer subject to the requirements of subparagraph 1G of this paragraph (f) or they may be prepared manually.

(1) Trust Account Records. The following books and records must be maintained for each trust account:

A. Account Documentation. A record of the name and address of the bank or other depository; account number; account title; opening and closing dates; and the type of account, whether pooled, with net interest

paid to the IOLTA Committee (IOLTA account), or account with interest paid to the client or third person on whose behalf the trust property is held (including master or umbrella accounts with individual subaccounts).

B. Check Register. A check register recording in chronological order the date and amount of all deposits; the date, check or transaction number, amount, and payee of all disbursements, whether by check, electronic transfer, or other means; the date and amount of every other credit or debit of whatever nature; the identity of the client matter for which funds were deposited or disbursed; and the current balance in the account.

C. Individual Client Records. A record for each client or third person for whom the lawyer received trust funds documenting each receipt and disbursement of the funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person, including a subsidiary ledger or record for each client matter for which the lawyer receives trust funds documenting each receipt and disbursement of the funds of the client or third person with respect to such matter. A lawyer shall not disburse funds from the trust account that would create a negative balance with respect to any individual client.

D. Bank Fees and Charges. A ledger or other record for funds of the lawyer deposited in the trust account pursuant to paragraph (b)(2)(i)

of this rule to accommodate reasonably expected bank charges. This ledger shall document each deposit and expenditure of the lawyer's funds in the account and the balance remaining.

E. Reconciliation Reports. For each trust account, the lawyer shall prepare and retain a reconciliation report on a regular and periodic basis but in any event no less frequently than every sixty days. Each reconciliation report shall show the following balances and verify that they are identical:

(i) The balance which appears in the check register as of the reporting date.

(ii) The adjusted bank statement balance, determined by adding outstanding deposits and other credits to the bank statement balance and subtracting outstanding checks and other debits from the bank statement balance.

(iii) For any account in which funds are held for more than one client matter, the total of all client matter balances, determined by listing each of the individual client matter records and the balance which appears in each record as of the reporting date, and calculating the total. For the purpose of the calculation required by this paragraph, bank fees and charges shall be considered an individual

client record. No balance for an individual client may be negative at any time.

F. Account Documentation. For each trust account, the lawyer shall retain contemporaneous records of transactions as necessary to document the transactions. The lawyer must retain:

(i) bank statements.

(ii) all transaction records returned by the bank, including canceled checks and records of electronic transactions.

(iii) records of deposits separately listing each deposited item and the client or third person for whom the deposit is being made.

G. Electronic Record Retention. A lawyer who maintains a trust account record by computer must maintain the check register, client ledgers, and reconciliation reports in a form that can be reproduced in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(2) Business Accounts. Each lawyer who receives trust funds must maintain at least one bank account, other than the trust account, for funds received and disbursed other than in the lawyer's fiduciary capacity.

(3) Trust Property Other than Funds. A lawyer who receives trust property other than funds must maintain a record showing the identity, location, and disposition of all such property.

(g) Interest on Lawyers' Trust Accounts.

(1) The IOLTA account shall be established with any bank, savings and loan association, or credit union authorized by Federal or State law to do business in Massachusetts and insured by the Federal Deposit Insurance Corporation or similar State insurance programs for State-chartered institutions. At the direction of the lawyer, funds in the IOLTA account in excess of \$100,000 may be temporarily reinvested in repurchase agreements fully collateralized by U.S. Government obligations. Funds in the IOLTA account shall be subject to withdrawal upon request and without delay.

(2) Lawyers creating and maintaining an IOLTA account shall direct the depository institution:

(i) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the IOLTA Committee;

(ii) to transmit with each remittance to the IOLTA Committee a statement showing the name of the lawyer who or law firm which deposited the funds; and

(iii) at the same time to transmit to the depositing lawyer a report showing the amount paid, the rate of interest applied, and the method by which the interest was computed.

(3) Lawyers shall certify their compliance with this rule as required by S.J.C. Rule 4:02, subsection (2).

(4) This court shall appoint members of a permanent IOLTA Committee to fixed terms on a staggered basis. The representatives appointed to the committee shall oversee the operation of a comprehensive IOLTA program, including:

(i) the receipt of all IOLTA funds and their disbursement, net of actual expenses, to the designated charitable entities, as follows: sixty-seven percent (67%) to the Massachusetts Legal Assistance Corporation and the remaining thirty-three percent (33%) to other designated charitable entities in such proportions as the Supreme Judicial Court may order;

(ii) the education of lawyers as to their obligation to create and maintain IOLTA accounts under Rule 1.15(h);

(iii) the encouragement of the banking community and the public to support the IOLTA program;

(iv) the obtaining of tax rulings and other administrative approval for a comprehensive IOLTA program as appropriate;

(v) the preparation of such guidelines and rules, subject to court approval, as may be deemed necessary or advisable for the operation of a comprehensive IOLTA program;

(vi) establishment of standards for reserve accounts by the recipient charitable entities for the deposit of IOLTA funds which the charitable entity intends to preserve for future use; and

(vii) reporting to the court in such manner as the court may direct.

(5) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall receive IOLTA funds from the IOLTA Committee and distribute such funds for approved purposes. The Massachusetts Legal Assistance Corporation may use IOLTA funds to further its corporate purpose and other designated charitable entities may use IOLTA funds either for (a) improving the administration of justice or (b) delivering civil legal services to those who cannot afford them.

(6) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall submit an annual report to the court describing their IOLTA activities for the year and providing a statement of the application of IOLTA funds received pursuant to this rule.

(h) Dishonored Check Notification.

All trust accounts shall be established in compliance with the following provisions on dishonored check notification:

(1) A lawyer shall maintain trust accounts only in financial institutions which have filed with the Board of Bar Overseers an agreement, in a form

provided by the Board, to report to the Board in the event any properly payable instrument is presented against any trust account that contains insufficient funds, and the financial institution dishonors the instrument for that reason.

(2) Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty days notice in writing to the Board.

(3) The Board shall publish annually a list of financial institutions which have signed agreements to comply with this rule, and shall establish rules and procedures governing amendments to the list.

(4) The dishonored check notification agreement shall provide that all reports made by the financial institution shall be identical to the notice of dishonor customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors. Such reports shall be made simultaneously with the notice of dishonor and within the time provided by law for such notice, if any.

(5) Every lawyer practicing or admitted to practice in this Commonwealth shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(6) The following definitions shall be applicable to this subparagraph:

(i) “Financial institution” includes (a) any bank, savings and loan association, credit union, or savings bank, and (b) with the written consent of the client or third person on whose behalf the trust property is held, any other business or person which accepts for deposit funds held in trust by lawyers.

(ii) “Notice of dishonor” refers to the notice which a financial institution is required to give, under the laws of this Commonwealth, upon presentation of an instrument which the institution dishonors.

(iii) “Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this Commonwealth.

## **Comments**

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. Separate trust accounts are warranted when administering estate monies or acting in similar fiduciary capacities.

[2] In general, the phrase “in connection with a representation” includes all situations where a lawyer holds property as a fiduciary, including as an escrow agent. For example, an attorney serving as a trustee under a trust instrument or by court appointment holds property “in connection with a representation”. Likewise, a lawyer

serving as an escrow agent in connection with litigation or a transaction holds that property “in connection with a representation”. However, a lawyer serving as a fiduciary who is not actively practicing law does not hold property “in connection with a representation.”

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[6] How much time should elapse between the receipt of funds by the lawyer and notice to the client or third person for whom the funds are held depends on the circumstances. By example, notice must be furnished immediately upon receipt of

funds in settlement of a disputed matter, but a lawyer acting as an escrow agent or trustee routinely collecting various items of income may give notice by furnishing a complete statement of receipts and expenses on a regular periodic basis satisfactory to the client or third person.

Notice to a client or third person is not ordinarily required for payments of interest and dividends in the normal course, provided that the lawyer properly includes all such payments in regular periodic statements or accountings for the funds held by the lawyer.

[7] Paragraph (e)(3) states the general rule that all withdrawals and disbursements from trust account must be made in a manner which permits the recipient or payee of the withdrawal to be identified. It does not prohibit electronic transfers or foreclose means of withdrawal which may be developed in the future, provided that the recipient of the payment is identified as part of the transaction. When payment is made by check, the check must be payable to a specific person or entity. A prenumbered check must be used, except that starter checks may be used for a brief period between the opening of a new account and issuance of numbered checks by the bank or depository.

[8] Paragraph (f) lists records that a lawyer is obliged to keep in order to comply with the requirement that “complete records” be maintained. Additional records may be required to document financial transactions with clients or third persons.

Depending on the circumstances, these records could include retainer, fee, and escrow agreements and accountings, including RESPA or other real estate closing statements,

accountings in contingent fee matters, and any other statement furnished to a client or third person to document receipt and disbursement of funds.

[9] The “Check Register,” “Individual Client Ledger” and “Ledger for Bank Fees and Charges” required by paragraph (f)(1) are all chronological records of transactions.

Each entry made in the check register must have a corresponding entry in one of the ledgers. This requirement is consistent with manual record keeping and also comports with most software packages. In addition to the data required by paragraph (f)(1)(B), the source of the deposit and the purpose of the disbursement should be recorded in the check register and appropriate ledger. For non-IOLTA accounts, the dates and amounts of interest accrual and disbursement, including disbursements from accrued interest to defray the costs of maintaining the account, are among the transactions which must be recorded. Check register and ledger balances should be calculated and recorded after each transaction or series of related transactions.

[10] Periodic reconciliation of trust accounts is also required. Generally, trust accounts should be reconciled on a monthly basis so that any errors can be corrected promptly. Active, high-volume accounts may require more frequent reconciliations.

A lawyer must reconcile all trust accounts at least every sixty days.

The three-way reconciliation described in paragraph (f)(1)(E) must be performed for any account in which funds related to more than one client matter are held. The reconciliation described in paragraph (f)(1)(E)(iii) need not be performed for accounts which only hold the funds of a single client or third person, but the lawyer must be sure that the balance in that account corresponds to the balance in the individual ledger maintained for that client or third person.

The method of preparation and form of the periodic reconciliation report will depend upon the volume of transactions in the accounts during the period covered by the report and whether the lawyer maintains records of the account manually or electronically. By example, for an inactive single-client account for which the lawyer keeps records manually, a written record that the lawyer has reconciled the account statement from the financial institution with the check register maintained by the lawyer may be sufficient.

[11] Lawyers who maintain records electronically should back up data on a regular basis. For moderate to high-volume trust accounts, weekly or even daily backups may be appropriate.

**Corresponding ABA Model Rule.** Different from Model Rule 1.15.

**Corresponding Former Massachusetts Rule.** DR 9-102, DR 9-103.